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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 State Bar of Nevada,

7 Plaintiff,

8 v.

9 Edward Clint Allen,

10 Defendant.

Case No. 2:22-cv-01014-RFB-DJA

Order
&
Report and Recommendation

11 Under 28 U.S.C. § 1915 Defendant is proceeding in this action *pro se* and has requested
12 authority to proceed *in forma pauperis*. (ECF No. 2). Instead of a complaint, Defendant moves
13 to remove this action from state court, asserting that the Plaintiff State Bar of Nevada (the “Bar”)
14 brings federal claims. (ECF No. 2-2). Because the Court finds that Defendant’s application is
15 complete, it grants his application to proceed *in forma pauperis*. However, because the Court
16 finds that Defendant has not asserted that the Court has jurisdiction over this matter, it
17 recommends granting the Bar’s motion to remand and denying Defendant’s motion to dismiss as
18 moot. Defendant has also moved to file electronically, which motion the Court grants.

19 **I. *In Forma Pauperis* Application**

20 Defendant filed the affidavit required by § 1915(a). (ECF No. 2). Defendant has shown
21 an inability to prepay fees and costs or give security for them. Accordingly, the request to
22 proceed *in forma pauperis* will be granted under 28 U.S.C. § 1915(a). The Court will now review
23 Defendant’s action.

24 **II. Screening Standard.**

25 Upon granting an application to proceed *in forma pauperis*, courts additionally screen the
26 complaint under § 1915(e). In cases where a party has sought to remove an action and to proceed
27 *in forma pauperis*, courts in this circuit have considered whether they have subject matter
28 jurisdiction at the screening stage. *See Hyde-Rhodes v. Welker*, No. 4:20-cv-00598-BLW, 2021

1 WL 6772988 (D. Idaho Jan. 11, 2021); *see Archer v. California*, No. 2:07-mc-0134-LEW-CMK,
2 2008 WL 943120 (E.D. Cal. Apr. 7, 2008). Federal courts are given the authority to dismiss a
3 case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may
4 be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C.
5 § 1915(e)(2).

6 **II. Discussion.**

7 **A. The Court recommends remanding Defendant’s case.**

8 1. The parties’ arguments.

9 The Bar’s complaint includes only one cause of action: a request for injunctive relief
10 under NRS 7.285. (ECF No. 2-2 at 24). That statute prohibits anyone who is not an active
11 member of the State Bar of Nevada from practicing law in the state. (*Id.*). The Bar alleges that
12 Defendant violated this statute by practicing law without being an active member of the Bar.
13 (*Id.*).

14 Defendant’s petition for removal asserts that the Court has federal question jurisdiction
15 over this matter under 28 U.S.C. § 1331. (ECF No. 2-2 at 1). He argues that, by bringing the
16 action against him, the Bar has violated his First Amendment right to freedom of speech, Fifth
17 Amendment due process rights, Fourteenth Amendment equal protection and due process rights,
18 and his rights under the Online Freedom of Speech Act. (*Id.* at 3). He adds that the Bar based its
19 allegations on complaints it received through “interstate wire,” “interstate telecom,” and through
20 its website. (*Id.*).

21 The Bar moves to remand, arguing that the Court lacks federal question jurisdiction
22 because the Bar’s claims are based entirely on Nevada law. (ECF No. 13 at 5). Defendant
23 responds and primarily argues that the complaints on which the Bar bases its allegations are
24 hearsay and not evidence. (ECF No. 15). Defendant adds that the Bar was six days late in
25 seeking to remand. (*Id.* at 4). The Bar replies that Defendant’s arguments about the veracity of
26 the complaints the Bar received has no bearing on jurisdiction. (ECF No. 16). And regarding
27 Defendant’s six-days-late argument, the Bar explains that motions to remand based on lack of
28 subject matter jurisdiction may be filed at any time before final judgment. (*Id.* at 3).

1 2. Analysis.

2 Federal courts are courts of limited jurisdiction and possess only that power authorized by
3 the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Under 28 U.S.C.
4 § 1331, federal courts have original jurisdiction over “all civil actions arising under the
5 Constitution, laws, or treaties of the United States.” Cases “arise under” federal law either when
6 federal law creates the cause of action or where the vindication of a right under state law
7 necessarily turns on the construction of federal law. *Republican Party of Guam v. Gutierrez*, 277
8 F.3d 1086, 1088-89 (9th Cir. 2002). “If at any time before final judgment it appears that the
9 district court lacks subject matter jurisdiction, the case *shall* be remanded.” 28 U.S.C. § 1447(c)
10 (emphasis added).

11 A civil action brought in state court may be removed to a federal district court if the
12 district court has original jurisdiction over the matter. 28 U.S.C. § 1441(a). The defendant
13 asserting the removal must prove it is proper, and there is a strong presumption against removal
14 jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). “Federal jurisdiction must be
15 rejected if there is any doubt as to the right of removal in the first instance.” *Id.*

16 Whether federal-question jurisdiction exists is based on the “well-pleaded complaint rule,”
17 which provides that “federal jurisdiction exists only when a federal question is presented on the
18 face of the plaintiff’s properly pleaded complaint.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386,
19 392 (1987). “[O]riginal jurisdiction is lacking even if a defense is alleged to be based exclusively
20 on federal law.” *Sullivan v. First Affiliate Securities, Inc.*, 813 F.2d 1368, 1371-72 (9th Cir.
21 1987). “The plaintiff is ‘master to decide what law he will rely upon...’” *Id.* (quoting *The Fair v.*
22 *Kohler Die & Specialty Co.*, 22 U.S. 22, 25 (1913)).

23 While a plaintiff cannot defeat removal by masking or “artfully pleading” a federal claim
24 as a state claim, the plaintiff may ignore the federal question and assert only a state law claim and
25 defeat removal. *See id.* Under the “artful pleading” doctrine, “[i]f the only remedy available to
26 plaintiff is federal, because of preemption or otherwise, and the state court necessarily must look
27 to federal law in passing on the claim, the case is removable regardless of what is in the
28 pleading.” *Id.* (quoting 14A C. Wright, A. Miller & E. Cooper, *Federal Practice & Procedure*

1 § 3722, at 268-75 (2d ed. 1985)). “The ‘artful pleading’ doctrine is a narrow exception to the
2 straightforward rules of removal jurisdiction, which we will apply only if ‘the particular conduct
3 complained of [is] governed exclusively by federal law.’” *Id.* (quoting *Hunter v. United Van*
4 *Lines*, 746 F.2d 635, 640 (9th Cir. 1984)). The Ninth Circuit explained that the doctrine should
5 only be invoked “in exceptional circumstances.” *Id.*

6 Additionally, there is a “presumption against federal preemption unless the state attempts
7 to regulate an area in which there is a history of significant federal regulation.” *Gadda v.*
8 *Ashcroft*, 377 F.3d 934, 944 (9th Cir. 2004). Attorney discipline is not such an area. *Id.* “The
9 Supreme Court of the United States has long recognized that the several states have an important
10 interest in regulating the conduct of the attorneys whom they license.” *Id.* (citing *Middlesex*
11 *County Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 434 (1982)).

12 Here, the Court lacks jurisdiction to hear this case because it does not arise under federal
13 law. Defendant has neither shown that the removal is proper nor overcome the strong
14 presumption against removal jurisdiction. Because the Court doubts that Defendant had the right
15 to remove this case in the first instance, it must recommend rejecting federal jurisdiction. This is
16 true even though the Bar moved thirty-six days after Defendant removed the case because the
17 statute governing procedure after removal mandates that the Court remand cases over which it
18 lacks subject matter jurisdiction at “any time before final judgment.” 28 U.S.C. § 1447.

19 Under the well-pleaded complaint rule, no federal question is presented on the face of the
20 Bar’s complaint. The Bar presents only one cause of action arising under Nevada law. And
21 while Defendant asserts that the Bar’s cause of action is improper and violates his constitutional
22 rights, those are Defendant’s claims, not the Bar’s. Even if Defendant raised these alleged
23 constitutional violations as a defense, they would still not lend the Court jurisdiction over the
24 matter. The Bar has sued entirely under Nevada law.

25 The Court is also unpersuaded by Defendant’s arguments that the Bar has “artfully
26 pleaded” a federal claim as a state claim. The remedy the Bar seeks is not federal. Instead, the
27 Bar asks the state court to issue an injunction “prohibiting Defendant from continuing in the
28 unauthorized practice of law.” (ECF No. 2-2 at 25). But this is not an exceptional circumstance

1 where the conduct is governed exclusively by federal law. To the contrary, regulating the
2 conduct of the attorneys it licenses—and prohibiting the practice of law by those it does not—is
3 the purview of state courts.

4 For that reason, preemption also does not apply to give this Court jurisdiction. Attorney
5 discipline is not an area where there is a history of significant federal regulation. Again, the
6 Supreme Court has recognized that the states have an important interest in regulating the conduct
7 of the attorneys whom they license. The Court thus recommends granting the Bar’s motion to
8 remand.

9 ***B. The Court grants Defendant’s motion to file electronically.***

10 Defendant moves to file documents electronically. (ECF No. 5). Under Local Rule IC 2-
11 1(b), a *pro se* litigant may request the court’s authorization to register as a filer in a specific case.
12 Defendant appears to have access to a word processing program, explains that he has an existing
13 PACER account, and has access to the Local Rules. (*Id.* at 1). Because the Court finds that
14 Defendant is capable of filing electronically, it grants his motion.

15 ***C. The Court recommends denying Defendant’s motion to dismiss.***

16 Because the Court is recommending granting the Bar’s motion to remand, it also
17 recommends that Defendant’s motion to dismiss be denied as moot.

18
19 **ORDER**

20 **IT IS THEREFORE ORDERED** that Defendant’s application to proceed *in forma*
21 *pauperis* (ECF No. 2) is **granted**. Defendant shall not be required to pre-pay the filing fee.
22 Defendant is permitted to maintain this action to conclusion without the necessity of prepayment
23 of any additional fees or costs or the giving of a security therefor. This order granting leave to
24 proceed *in forma pauperis* shall not extend to the issuance and/or service of subpoenas at
25 government expense.

26 **IT IS FURTHER ORDERED** that Defendant’s motion to file electronically (ECF No. 5)
27 is **granted**.
28

1. Defendant must become familiar with the Electronic Filing procedures and events menus and obtain a CM/ECF login and password from the District of Nevada by submitting a completed registration form. Links to these items are available at <https://www.nvd.uscourts.gov/e-filing-permission/>.
2. Defendant must read and comply with the guidelines available at <https://www.nvd.uscourts.gov/e-filing-permission/>

IT IS RECOMMENDED that Defendant's motion to dismiss (ECF No. 7) be **denied as moot.**

NOTICE

DATED: October 11, 2022

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